

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[Circular No. 2468]

Rights-of-Way, Principals and Procedures; Federal Land Policy and Management Act; Management of Rights-of-Way and Related Facilities on Public Lands and Reimbursement of Costs**AGENCY:** Bureau of land Management, Interior.**ACTION:** Final rulemaking.

SUMMARY: This final rulemaking establishes procedures for the management of all rights-of-way on public lands except pipelines for oil, natural gas and petroleum products; Federal Aid Highways; cost-share roads; and access to mining claims. Title V of the Federal Land Policy and Management Act of 1976 gives the management responsibility for these rights-of-way to the Secretary of the Interior.

EFFECTIVE DATE: July 31, 1980.

ADDRESS: Any recommendations or suggestions should be addressed to: Director (330), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Bob Molloyhan (202) 343-5537.

SUPPLEMENTARY INFORMATION: The proposed rulemaking on Management of Rights-of-Way and Related Facilities on Public Lands and Reimbursement of Costs under the provisions of title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761), was published in the Federal Register on October 9, 1979 (44 FR 58106). The proposed rulemaking invited comments for 90 days ending on January 7, 1980. During the comment period and several days thereafter, a total of 73 comments were received. Thirty-two of the comments came from business sources, mostly utilities, fifteen from State and local governments, twelve from Federal agencies, six from local rural electric associations and two from individuals.

General Comments

Many of the comments wanted to know what action had been taken on the suggestions made on the notice of intent to propose rulemaking. The preamble to the proposed rulemaking contained a detailed discussion of the comments received on the notice of intent to

propose rulemaking and the action taken on these comments. It would serve little purpose to discuss the comments again in this document.

Generally, the comments on the proposed rulemaking expressed the opinion that the Bureau of Land Management had made a real effort to adopt the points raised by those commenting on the procedures for granting rights-of-way outlined in the notice of intent. Several of the comments stated that they thought the proposed rulemaking was a good effort to meet users needs. Other comments were of the opinion that the proposed rulemaking needed extensive revision in order to provide users with an effective procedure for obtaining rights-of-way on public lands. The proposed rulemaking represented a conscious effort by the Bureau of Land Management to incorporate the changes recommended in the many comments received both in writing and during public hearings to provide a procedure that would be an effective tool both for users and for bureau personnel who issue the rights-of-way. Some of the suggested changes could not be accepted and every effort was made to adopt changes to the extent consistent with the law and regulations to provide the least burdensome rules possible.

One comment commended the efforts made in the proposed rulemaking to remove sexist terms, but recommended further efforts. While appreciating this comment, no further changes have been made in this regard.

In addition to the general comments, comments were received covering specific areas of the proposed rulemaking. The following segment of this preamble addresses those specific comments, setting forth only those sections on which comments were received.

Specific Comments*Objectives*

A comment requested that section 102(a)(2) of the Federal Land Policy and Management Act of 1976 be repeated in the Objectives section of the final rulemaking. Even though this suggestion has not been adopted, the Objectives section makes reference to land use plans, which requires compliance with the provisions of 43 CFR Part 1601, the Bureau of Land Management's land use planning regulations. Further, the rulemaking requires compliance with existing Federal and State law, including the requirement to comply with the provisions of the Federal Land Policy and Management Act of 1976; the basic

authority for the issuance of this rulemaking.

Another comment recommended that the Objectives section include a listing of the types of grants that could be made under this rulemaking. This suggestion has not been adopted because the type of grant that will be made as a result of an application for a right-of-way will be determined at the time of granting and the granting document will provide the terms of the grant.

A final comment on this section wanted a specific reference to the environmental analysis process to be included in the rulemaking. This general section of the final rulemaking has not been amended to include a specific reference to the environmental analysis process. Other sections of the rulemaking, § 2802.3-4, make specific provision for carrying out the environmental analysis process.

Authority

A comment requested that additional authority be listed for the issuance of rights-of-way. This rulemaking is concerned with the right-of-way authority granted by title V of the Federal Land Policy and Management Act. Other authority used for the granting of rights-of-way is covered in other parts of Title 43 of the Code of Federal Regulations. Therefore, no change has been made in the authority section of the final rulemaking.

Definitions

Several comments were directed at the various paragraphs of this section. A couple of comments recommended that the definition of the term "authorized officer" be changed. The comments argued that the definition was not specific enough and should list the qualifications of the authorized officer. The term "authorized officer" has not been changed. The term "authorized officer", as used in this section, refers in most cases to the District Manager who has management responsibility over the lands covered by a right-of-way application. These individuals are land managers with varied backgrounds. They do not work alone, but have in their district offices trained personnel who can give them the advice they need to use as the basis of their decision on a right-of-way application.

A few comments suggested amending the term "right-of-way grant" to include the type of right or interest in the lands that would be granted by the grant. The comments specifically wanted to include in the definition such terms as "easement", "lease", "permit", etc., and to define these terms in the definition section. As discussed above, the

granting document will specify the terms of the right-of-way. This approach is in keeping with the intent of title V of the Federal Land Policy and Management Act. Title V authorizes the Secretary of the Interior to grant, issue or renew rights-of-way over, upon, under or through the public lands for purposes listed in the title. Title V then gives the Secretary discretion as to the terms that will be part of any right-of-way grant. The rulemaking is designed to carry out this concept and reflect the discretionary authority contained in title V to the authorized officer. The terms of a right-of-way will be worked out using the application and the requirements it contains as the basis for the grant. Once the grant and its terms are offered and accepted by the applicant, it will represent an agreement between the parties as to the extent of the grant, and will detail the rights of the holder. The definition of the term "right-of-way grant" has not been changed as recommended by the comments.

A few comments requested that the definition of the term "temporary use permit" be amended to provide a more permanent type of grant for temporary use. The definition expresses the authorization that will be given for temporary use of the public lands. These permits will be issued in connection with a right-of-way and will provide for related activities for a short time period. A person who wants a greater use than that provided for in this part can apply for a right-of-way grant for the use or might consider other land use provisions of Title 43 of the Code of Federal Regulations. The definition and the provisions for granting temporary use permits in connection with right-of-way grants is consistent with the provisions of the Federal Land Policy and Management Act and no change has been made.

A couple of comments wanted an expanded definition of the term "project" to include related facilities, etc. The definition used in the rulemaking covers a system and the grant will include within its terms the extent of the project. No change has been made in the definition.

A few comments pointed out that the term "casual use" is used several times in the rulemaking and is not defined. It was suggested that the term be defined. This suggestion has been adopted and the term "casual use" has been defined.

Scope

One comment questioned the applicability of this rulemaking to areal grants. This rulemaking covers all the types of rights-of-way authorized by title V of the Federal Land Policy and

Management Act. Most rights-of-way are linear, but there are certain types of rights-of-way, such as communications sites, that are areal. This rulemaking covers those types of rights-of-way.

A comment raised the point that this rulemaking could be used to limit public use of the public lands. The rulemaking applies to rights-of-way provided for in title V of the Federal Land Policy and Management Act.

There is no requirement for a right-of-way for general use of the public lands by the public. The limitations on the public's use of the public lands are covered in other provisions of Title 43 of the Code of Federal Regulations. Further, the access roads built under a right-of-way granted pursuant to this rulemaking will afford the public greater access to the public lands because virtually all roads built on public lands pursuant to a grant are open to public use.

Nature of Right-of-Way Interest

This section of the proposed rulemaking was the focus of several comments. One matter commented on was the continuing right of access to the right-of-way grant area granted in this section. Most of the comments wanted what amounts to a right of exclusive use of the right-of-way grant area. A few of the comments objected to the right of entry set out in the proposed rulemaking. The right granted by a right-of-way grant will be commensurate with the needs of the user, but will grant exclusive use only in those instances when it is required to protect the public health and safety. Some of those making comments expressed the view that the requirement in the section went further than was needed. We have rewritten the paragraph on the continuing right of access to more clearly define what the right of the United States is with reference to the grant area.

Another area that generated comments was the language on common use of the right-of-way grant area. The comments wanted to limit the right of common use, with some recommending that the common use be granted only after permission had been obtained from the holder. These comments, like earlier comments on this section, appear to be aimed at obtaining what amounts to exclusive use or the right to control the use of a right-of-way area. The provision has not been changed and continues the right of common use and the right to authorize compatible uses of the right-of-way.

A comment raised the question of what would be the responsibilities of a right-of-way holder if there was a need to trim, prune or clear vegetative

material in the performance of normal maintenance on the right-of-way. This subject was not covered in this part of the proposed rulemaking. The final rulemaking has been amended to clarify the rights of a right-of-way holder in carrying out normal maintenance on the right-of-way.

After careful consideration, paragraph (f) has been rewritten to clarify its provisions and to make clear what a holder can authorize in the way of use of his/her right-of-way grant area.

While endorsing long term grants, including grants in perpetuity, a question was raised in the comments concerning the clarity of the language giving the authorized officer authority to determine the period of a grant or permit. In response to that question, the language has been rewritten and clarified. In this same paragraph, a comment suggested that language be added to the factors to be considered in determining the period of a grant or permit which would cover any other conditions or limitations imposed by law on the holder which might affect the term of a right-of-way grant. After careful consideration, language to that effect has been added to the factors to be considered.

A few comments wanted the language covering periodic review of long-term right-of-way grants to be changed to give such a holder a long period when the grant would be relatively free of review. In considering this suggestion, it was decided that the holder of a long term grant should be allowed to exercise his use of the grant over a fairly long period of time without concern about review. In keeping with this decision, the review language has been amended to provide that there will be no review for the first twenty years of the grant, with periodic review thereafter at least every ten years. Part of the basis for this decision is the realization that the Bureau of Land Management should, prior to giving a long term grant, have considered all of the consequences of that grant and included the necessary terms and conditions. This language does not override the provision allowing for review of the rental to assure that fair market value is being received, nor does it override the provisions which give the Secretary of the Interior authority to require the removal of the right-of-way during its term if it is found necessary to accommodate Federal action under the provisions of this rulemaking.

Reciprocal Grants

One of the comments on this section questioned the authority for this provision. The authority to grant a right-

of-way is discretionary. Further, title V of the Federal Land Policy and Management Act gives the Secretary of the Interior authority to impose terms and conditions on a right-of-way grant. In the exercise of the authority granted the Secretary by Title V, it has been determined that a requirement for reciprocal grants will be imposed as a condition for the granting of a right-of-way. It is true, as several of the comments pointed out, that the proposed rulemaking could be interpreted as authority to require rights from an applicant that are greater than those granted by the United States. In response to these comments, the section has been amended to clarify that the reciprocal rights required from an applicant will be equivalent to the rights granted the applicant by the right-of-way grant or temporary use permit.

Terms and Conditions of Interest Granted

This section of the proposed rulemaking drew a sizeable number of comments. One group of comments was concerned about the requirement that a right-of-way grant comply with all the Federal and State laws applicable to the use authorized in the grant, particularly laws enacted after the grant is made. There is no way these regulations can excuse a holder from meeting the requirements of the law. Therefore, no change has been made in this provision.

A large number of comments expressed discontent with the requirement that a right-of-way grant or temporary use permit be subject to modification without costs to the United States if the Secretary of the Interior determines that the lands are needed for another purpose that will better serve the national interest. Some of the comments objected to the lack of compensation, while others expressed the view that the conditions under which the modification could be made were too broad. Even though the requirement for modification of a right-of-way grant by decision of the Secretary of the Interior has been a requirement of the regulations for some time, this provision has been deleted from the final rulemaking. After careful study of the rulemaking, it has been determined that placing a blanket requirement for modification of all right-of-way grants in the final rulemaking is not consonant with the purposes and intent of Title V of the Federal Land Policy and Management Act when taken as a whole. Each right-of-way grant will now be studied to determine if it is appropriate to include in its provisions a specific stipulation requiring modification of the grant without

compensation. Title V clearly gives the Secretary authority to make this determination on a case-by-case basis. Finally, since there is no longer any reference to the "national interest" in the rulemaking, there is no need to take action on the comment that suggested that the term be defined.

A comment questioned the authority for imposing the requirement that the activities carried on under a right-of-way grant not violate applicable air and water quality standards or related facility siting standards established by or pursuant to applicable Federal or State law. This provision of the rulemaking is a restatement of the requirements of section 505(a) of the Federal Land Policy and Management Act, and there has been no change.

Another area that drew comments was the requirement that a right-of-way grant or temporary use permit holder take action, including the requirement to make construction and maintenance forces available, to prevent and suppress fires. A comment was also made that the term "near" was too indefinite and needed to be clarified. The requirement to assist in the prevention or suppression of fires is one that has long been part of the standard requirements for the granting of a right-of-way on the public lands. This requirement works to the benefit of not only the Federal Government, but the users of the public lands whose property would be destroyed by fires. While no change has been made in the requirement for assistance in the area of fire prevention and suppression, the section has been rewritten to clarify the issue of proximity and when that requirement can be levied on the right-of-way grant or permit holder.

A comment raised the point that one of the stipulations imposed by the proposed rulemaking was a provision for the protection of public or private property. The comment questioned the authority for that requirement in the proposed rulemaking. The paragraph containing that provision has been amended to delete the reference to "public and private" property. The paragraph now reflects the provisions of section 505 of the Federal Land Policy and Management Act and requires that action be taken to protect "Federal" property. Another change in this paragraph is the inclusion of cultural values as one of the values to be protected.

Unauthorized Occupancy

A comment on this section suggested that the section was ambiguous and should be deleted from the final rulemaking. The section is not clear and

has been revised by the addition of reference to other sections to make clear what casual use is and the kind of activity that will be permitted on the public lands without a grant or permit.

Preapplication Activity

The comments on this section supported the section and felt that it would help the Bureau of Land Management and the using public work together to meet the needs of users for right-of-way grants and permits on the public lands. Only minor editorial changes have been made in this section.

Application Filing

The one comment received on this section recommended that the language covering the filing of an application be clarified. In response to that recommendation, the language on the place of filing of an application has been rewritten.

Coordination of Applications

The few comments received on this section felt that it placed an excessive requirement on an applicant. One comment wanted the provision changed so that the requirement would be discretionary rather than mandatory. The section has been kept mandatory but has been revised to cover applications with Federal departments and agencies only.

Applicant Qualifications

Several comments were directed to this section of the proposed rulemaking. A couple of comments questioned the citizenship requirement in the proposed rulemaking. The citizenship requirement reiterates the requirement that exists in the present right-of-way regulations, and is consistent with the provisions of the recently finalized regulations on rights-of-way for oil and natural gas pipelines. Further, this requirement will be helpful in keeping vital systems that use public lands for rights-of-way from coming under the domination of non-citizens. There is nothing in title V of the Federal Land Policy and Management Act that prevents the Secretary of the Interior from imposing this requirement as part of the regulations authorized by title V. For the reasons set out above, the citizenship requirement has been retained as part of the terms and conditions for the issuance of a right-of-way grant or temporary use permit under title V of the Federal Land Policy and Management Act.

A couple of comments pointed out that the phrase "any appreciable amount" of stock was not clear, especially in light of the fact that section 501(B)(2) of the Federal Land Policy and

Management Act refers to shareholders owning 3 percent or more of shares. These comments are well taken and the language dealing with stock ownership has been amended to follow the language of the Federal Land Policy and Management Act.

One comment objected to the disclosure requirements for corporations, partnerships, associations, etc. The disclosure requirements of the rulemaking have been kept to the minimum consistent with the requirements placed on the Secretary of the Interior by the Federal Land Policy and Management Act. Paragraph (i) of the application coordination section has been amended to reduce the filing requirement of that paragraph from being required with every application to only those instances when the authorized officer requests the information.

A couple of comments questioned the requirement of paragraph (e) of the coordination of application section and pointed out that many corporations have provisions allowing certain officers to act in behalf of the corporation on certain matters without additional specific authority. The language of paragraph (e) would allow the corporation to file such a document as an "other document". Once the document is filed, other portions of the rulemaking relieve the corporation of having to refile the document if it has not been changed or amended. No change has been made in paragraph (e).

Technical and Financial Capability

A comment received on this section complained that the rulemaking should be limited to the construction phase of the right-of-way and should not include operation, maintenance and termination of the project. The rulemaking covers all aspects of a right-of-way project so that the authorized officer can be as certain as possible that an applicant or successor has the capability to carry out the plans set forth in the application to be sure that the right-of-way project will not be abandoned at some point, leaving the United States with the responsibility for reclaiming the area. There has been no change in this section.

Project Description

One comment was concerned with the question of how far into the future description will have to go. Most utilities have long range plans that project their needs for facilities. Normally, those plans show how each of the anticipated projects will interrelate with the total system. The rulemaking requires that that information be made available so that the Bureau of Land Management, as

the land manager, can have some idea of anticipated uses of the public lands. The more information given the land manager, the better able that manager will be to assist in meeting the needs of the user when those needs arise. This section has been amended to delete the requirement for information to determine the technical and economic feasibility of the project since that information is covered in a preceding section.

The other comments on the section were generally to the effect that the section was too detailed and required too much information. The section has been carefully reviewed and all of the information required in the section is needed if the authorized officer is to make a proper decision on the issuance of a right-of-way grant or temporary use permit. Therefore, with the exception of the change discussed above, no change has been made in the section.

Environmental Protection Plan

The comments on this section were directed to the process by which the environmental protection plan is to be established. The comments expressed concern that the plan would be developed and finalized without any consideration of the applicant's views or suggestions. While it is true that the authorized officer makes the final decision as to the content of the environmental protection plan because that officer has the ultimate responsibility of protecting the environment, every effort will be made to reach agreement with an applicant as to the contents of the plan. If agreement cannot be reached, the reasons for the various provisions will be explained to the applicant. The pre-application process will assist in the development and finalization of the environmental protection plan. No change has been made in this section.

Additional Information

The comments on this section were concerned that it might be used by an authorized officer to obtain information that is not actually needed to complete the issuance of the right-of-way grant or temporary use permit. This section was included in the rulemaking to allow the authorized officer to obtain information other than that specifically required in the other sections of the rulemaking to assist in his decisionmaking process. If this section were not in the rulemaking, the listing of required or discretionary information items would have been much longer. Generally, prior to making a formal request for the information, the authorized officer will discuss the need for additional information with an

applicant, explaining the reasons for the information.

Maps

In addition to the comments supporting the need for this section, other comments raised specific questions. One comment felt that the requirements of the section were unreasonable and excessive. Another comment wanted the section to be made even more specific and to require that surveys be conducted only by a certified surveyor. This comment stated that the existing regulations on rights-of-way made such a requirement. The existing regulations do not require that a survey be made by a certified surveyor. The appendices to the regulations do have forms that require that the survey, if performed, be certified by the company engineer performing the survey or the person employed to perform the survey. Nowhere in those forms is there a requirement that the survey be performed by a certified surveyor. The section sets the general standards for a survey and will permit the authorized officer to request a certified survey, if that is deemed appropriate. No change has been made in the survey standards of the rulemaking.

A few comments recommended that a United States Geological Survey Quadrangle map giving a general outline of the project should be sufficient for the processing of an application. This comment raised a valid point and the section has been rewritten to be more explicit as to those situations where the authorized officer does not feel a need for a detailed map during the application processing process. The change will reduce the burden on many applicants by reducing the requirements placed on them.

A final comment on this section objected to the requirement in the section on public roads constructed under the provisions of R.S. 2477 (43 U.S.C. 932, repealed October 21, 1976), expressing the view that it would place a heavy burden on small units of government and there was no authority for imposing the requirement. The section on R.S. 2477 has been rewritten to make clear the reason why it is being included in the rulemaking. Every effort will be made to work with those individuals covered by the section to obtain the information needed to note to the public land records the roads that have been constructed over the years as a result of the application of R.S. 2477. The Department of the Interior seeks the cooperation of everyone in this important effort.

Application Processing

Among the several comments on this section, was the request that the denial of an application be in writing and that the denial give the reasons for the denial. All denials will be in writing and will contain the reasons for the denial. The documentation will be necessary to any applicant wishing to appeal the decision of the authorized officer. The process for handling the denial is part of the operating procedures for the Bureau of Land Management contained in its manual sections.

One set of comments on this section recommended that the section contain a time limit for action by the authorized officer on an application. This recommendation was not adopted because of the impossibility of setting a time frame that would be generally applicable to all applications.

There is no way of determining the time it might take to do a complicated environmental impact statement or a cultural inventory or any one of several other checks that are required. The pre-application process will allow the parties to discuss time frames and estimate the time that will be required to complete the approval of an application. Every effort will be made to expedite processing of right-of-way applications so that the applicant will not be unnecessarily delayed.

The requirement for additional information drew two comments that there should be some effort to limit the amount of additional information that might be required. The specific suggestion was made that this request be tied to the pre-application process. The authorized officer will only request information that he needs to make a decision on the application. Normally, this process will be unnecessary if the pre-application process has been successful because the information and the reasons why it is needed will have been discussed in the pre-application meetings. This section allows the authorized officer to obtain information essential to the decisionmaking process. The request will usually be made only after the need for the information has been discussed with the applicant. The section has been changed to require that the request for additional information be in writing.

Two comments objected to the inclusion of the public interest as a consideration for action on a right-of-way grant or permit application. The Secretary of the Interior has the responsibility to consider the public interest in actions taken under the provisions of the Federal Land Policy and Management Act. In addition,

section 505(b) of that Act requires the imposition of terms and conditions in rights-of-way issued under title V of the Act to protect the public interest in lands traversed by the right-of-way. No change has been made in this provision.

A few of the comments were concerned with the discretionary authority granted by this section to hold public hearings on an application. One comment was concerned that the need for public hearings be coordinated with other agencies, Federal and State. The authority for public hearings on an application will be used when there is sufficient public interest to justify hearings and only after being coordinated. The hearing will give the public an opportunity to express themselves on a right-of-way and will help the applicant and the authorized officer to understand the public's concerns. The section has been retained unchanged in the final rulemaking.

Finally, one comment on this section questioned the need for the authorized officer to have detailed construction plans and requested that the provision be deleted. The provision, which will be used only when necessary, is needed to allow the authorized officer to be sure that appropriate steps are being taken during the construction phase of the project to carry out the terms and conditions of the grant placed there to protect the public lands. This kind of advance checking is especially important in critical areas where irreparable damage could occur if inappropriate construction activities occur. The old adage that an ounce of prevention is worth a pound of cure is especially appropriate in these instances. The provision has not been changed.

Special Application Procedures

One comment on this section requested that the provisions be broadened to include all rights-of-way, not just the ones enumerated in the proposed rulemaking. This suggestion has been adopted and the section rewritten to cover all rights-of-way. A second comment on this section objected to the mapping requirement associated with applications filed under this section. The maps are essential if the Bureau of Land Management is to properly note the rights-of-way to its land records. However, the changes made in the section on maps will greatly reduce the cost associated with filings made under this section. The noting of the public land records will protect the right-of-way holders when the lands are considered for other uses.

A final comment on this section requested that certain organizations be

excluded from the requirement to pay the minimum fee for the filing of an application under this section. The provision remains unchanged in the final rulemaking. The minimum fee required by the section will bear a part of the costs of processing the applications and making the needed notation to the public land records. This minimum fee is insignificant when compared to the present costs of processing applications of the type covered by this section.

Reimbursement of Costs

This section drew more comments than any other section of the rulemaking, with most of the comments strongly objecting to the provision. Cost reimbursement was initiated by the Bureau of Land Management for all non-governmental rights-of-way in 1975 under existing authorities, including the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a). In 1976, section 304 of the Federal Land Policy and Management Act specifically gave the Bureau of Land Management authority to recover "reasonable" costs, including the costs of special studies and environmental reports, for applications relating to the public lands. The Secretary of the Interior determined that costs of special studies and environmental reports legally necessary for application processing were reasonable in Secretarial Order 3011 (42 FR 55280).

Since the issuance of that order, two court decisions have upheld the authority of the Federal Government to recover reasonable costs, including the costs of preparing an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.). In *Mississippi Power and Light Co. v. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), the court held that the Nuclear Regulatory Commission could, under the Independent Offices Appropriation Act, charge an applicant for a nuclear reactor license the full cost of expenses incurred by the Commission in processing the license application, including the cost of an environmental impact statement. Furthermore, the court specifically stated that it was not necessary to segregate the costs of the private and public benefits of an environmental impact statement, holding that the Commission may recover the full cost of providing a service (i.e. application processing) to an identifiable recipient (i.e. the applicant), regardless of the incidental public benefits flowing from that service. The court virtually ignored the contrary holding in *Public Services of Colorado v. Andrus*, 433 F. Supp. 144 (D. Colo. 1977),

It is more appropriate to follow the interpretation given the Independent Offices Appropriation Act by the court of appeals rather than that of the district court and the rulemaking reflects that position.

In *Alumet v. Andrus*, 607 F.2d 911 (10th Cir 1979), the court of appeals overturned the ruling of the lower court that section 304 of the Federal Land Policy and Management Act did not authorize the Secretary of the Interior to seek reimbursement from an applicant for any part of the cost of preparing an environmental impact statement. The decision of the district court below was substantially based on the analysis provided in *Public Services of Colorado v. Andrus*. The reversal of the *Alumet* district court decision cast further doubt on the holding of the district court in the *Public Services* case. While the court of appeals in the *Alumet* case left unanswered the question whether full costs of an environmental impact statement can be recovered, when *Alumet* is read together with *Mississippi Power and Light*, one can draw the conclusion that it is within the constitutional and statutory authority of the Secretary of the Interior to impose upon an applicant for a right-of-way the full costs of an environmental impact statement necessary to process the application. The comments on the proposed rulemaking suggest that because the authority of the Secretary of the Interior to seek reimbursement is discretionary, cost reimbursement should be eliminated or that certain organizations, presumably acting in the public interest, should be exempted from cost reimbursement altogether. It is clear that the language of section 304 of the Act is discretionary. Nevertheless, the Secretary's ability to reduce or eliminate cost reimbursement is severely restricted by the Congress in the exercise of its authority over appropriations.

Moneys paid by applicants for processing rights-of-way applications are placed in a revolving account at the Department of the Treasury:

The moneys received for reasonable costs under this subsection shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended * * *. 43 U.S.C. 1734(b) (1976).

On July 26, 1977, Congress implemented this revolving account through the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1978, Pub. L. 95-74, 91 Stat. 285, by authorizing the expenditure of moneys collected under sections 304(a), 304(b), 305(a) and 504(g)

of the Federal Land Policy and Management Act. At the same time, Congress appropriated no other funds for processing right-of-way applications. The Senate in its report on the bill which became Pub. L. 95-74 states:

This self-sustaining account, established under authority of the Federal Land Policy and Management Act, permits the Bureau of Land Management to finance required environmental study costs for rights-of-way applications, using fees assessed against the applicants * * *. S. Rep. No. 276, 95th Cong., 1st Sess. 9 (1977).

The House in its report stated:

This account uses the revenue collected under specified sections of the Federal Land Policy and Management Act of 1976. These include the collection of reasonable administrative and other costs, including environmental impact statement preparation costs in connection with right-of-way applications from the private sector. This includes such programs as the Trans-Alaska pipeline, and other energy casework functions where the costs of projects will be provided in advance by the applicant before the BLM initiates any work on the application. H.R. Rep. No. 392, 95th Cong., 1st Sess. 20-21 (1977).

This revolving account has been continued on the same basis by Congress through fiscal year 1980. Since at the present time no money for preparation of environmental impact statements is provided by Congress, all funds for such work must be provided by the applicant.

A related problem arose in *Beaver v. Andrus*, No. C-76-277 (D. Utah, 1979). There, the district court ruled that the municipalities engaged in the Intermountain Power Project were entitled to the exemption from the cost reimbursement requirements then appearing at 43 CFR 2802.1-2(a)(2)(i) (1976), for instrumentalities of local government where the lands involved will be used for governmental purposes and will continue to serve the general public. This was despite the fact that IPP would be competing with other generators and transporters of electric power. Although that decision is on appeal, it is necessary to close this apparent loophole to cost reimbursement by eliminating the exemption through an amendment to the rulemaking. This is necessary both to insure that there are adequate funds to process rights-of-way applications and to insure that all applicants are treated equitably. The exemption was originally created before the revolving fund in section 304 of the Federal Land Policy and Management Act was established and is no longer practical. Furthermore, to provide a Federal subsidy because of governmental association where an

applicant is acting as any private organization in providing services in the marketplace, was not the original intent of this exemption. In eliminating the exemption, it is noted that, in five years, only one applicant formally applied for it.

A few comments objected to the requirement for cost reimbursement when an application is denied and recommended that the requirement be dropped. The provision has been left in the final rulemaking. Even when an application is denied or withdrawn, the Bureau of Land Management will have expended manhours and money in connection with that application—money and manhours that it is entitled to recover. As stated above, the only funds available for processing applications are those recovered through this provision. Failure to recover the cost involved with applications that are denied or withdrawn would have an adverse impact on the total program and cannot be permitted.

Rental Fees

This section was the object of the second highest number of comments. One group of comments wanted certain additional groups of users exempted from the payment of a rental for the use of the public lands for a right-of-way. The rulemaking attempts, with certain enumerated exceptions, to treat all those who use the public lands for the same purpose in the same way. It would not be appropriate to charge one holder a rental based on fair market value for the right-of-way grant and not charge the same fair rental to another holder in like circumstances who is using the public lands for the identical purpose. One change has been made in this section to cover the statutory requirement to collect an annual rental for right-of-way grants and temporary use permits issued under the provisions of subpart 2880 of this title.

One comment objected to the requirement for the payment of the rental in advance on an annual basis, rather than a rental for the term of the grant. Payment of the rental in advance on an annual basis is required by section 504(g) of the Federal Land Policy and Management Act. The rulemaking follows the requirement of the statute and has not been revised.

One comment wanted instructions included in the rulemaking on how the appraisal for fair market value was to be made. For a long time the Bureau of Land Management has had manual guidance on appraisal methods, including use of independent appraisals. Those manual instructions are available to the public upon request. The

rulemaking has not been amended to include this instruction.

A few comments questioned the provision allowing readjustment of rental fees, with one comment suggesting that readjustments be allowed only on renewal, assignment, transfer or review. The readjustment provision is a necessary part of this rulemaking if the Secretary of the Interior is to meet a requirement of section 504(g) of the Federal Land Policy and Management Act and recover the fair market value of the public lands covered by the right-of-way grant or temporary use permit. Readjustments will not be made unless a review of the land values in the area of the grant or permit indicate that there has been sufficient appreciation in land values to justify a readjustment. Normally, such reappraisals will not occur more often than every five years, but when events cause rapid escalation in land values in the area, the authorized officer will have no choice but to make an adjustment in the rental. The rulemaking does require reasonable notice before readjustment is made and the user has the right to appeal any readjustment. The only change in this is the addition of language making it clear that reappraisals will occur at least every five years.

Finally, one comment suggested that the Secretary of the Interior lacked authority to terminate a right-of-way grant or temporary use permit and hold any assets located on the public lands covered by the grant or temporary use permit for failure to make required payments. This provision is nothing more than a requirement that all assessed payments must either be paid or the holder has no right to use the lands covered by the payment and that the assets located on those lands are held subject to the right of the authorized officer to release them or use them to satisfy those obligations. This is a provision that is commonly required and exercised by landowners. There is no reason the United States cannot exercise this practice. No change has been made in this provision.

Bonding

One of the comments on this section suggested that a maximum amount for a bond should be set in the section. It is impossible to set a maximum bond because no one knows how large any project covered by a right-of-way grant on the public lands might be. Therefore, the obligations imposed by the right-of-way grant or temporary use permit cannot be determined. No maximum bond has been set in the rulemaking.

Another comment on this section requested that provision be made for the accrual of interest on bonds posted under this provision. The Secretary of the Interior has no authority to provide for the accrual of interest on bonds and no such provision has been included.

Finally, one comment suggested that the bonding provision be waived for those concerns under the regulatory jurisdiction of agencies that control utility activities. This suggestion has not been adopted because there is no assurance to the United States that a holder of a right-of-way grant or temporary use permit will fulfill its obligations under that grant or permit simply because it came under the regulatory control of an agency or department.

Liability

A large number of comments objected in the strongest terms to the provision in the regulation that imposes strict liability. The comments suggested that the imposition of strict liability was unreasonable, especially in the light of the fact that holders are not normally given exclusive control of the area covered by a right-of-way grant or temporary use permit. The comments argued that holders should not be held strictly liable for activities on right-of-way grant or permit areas when persons other than themselves can cause damage and injury. Section 504(h) of the Federal Land Policy and Management Act gave the Secretary of the Interior discretionary authority to impose strict liability in connection with right-of-way grants or temporary use permits under the circumstances described. The decision to exercise that authority was made after careful consideration of all aspects of the issue. The overriding reason for imposing strict liability was the need to provide the Federal Government and the tax paying public with protection from damages resulting from extra hazardous activity on the public lands by those holding a right-of-way grant or temporary use permit and gaining a benefit from such use. The liability section has been amended to include "acts of God" as a situation when strict liability will not be imposed.

Holder Activity

The comments on this section made two suggestions. The first suggestion was that paragraph (a) should be broadened because the controls on a holder are too strict. The condition imposed by paragraph (a) will not be used for every right-of-way grant or temporary use permit. The reasons for a notice to proceed will be explained to a holder before it is imposed and such a

notice will be a term and condition that has been agreed to by the applicant prior to the acceptance of a right-of-way grant or temporary use permit. No change has been made in paragraph (a) because the notice to proceed will be used when it is determined to be needed to protect the lands.

The second suggestion was that paragraph (b) was too restrictive and should be amended to allow greater flexibility. The condition imposed by paragraph (b) are needed so that the holder will notify the authorized officer when a deviation from location or use is made. This required notice will allow the authorized officer to work with the holder on a change in location and use, if possible, and to protect the holder from later problems because of a change. For these reasons, paragraph (b) has not been amended.

Immediate Temporary Suspension of Activities

One comment questioned the need for the authorized officer to have the authority to order an immediate temporary suspension of activities. The authorized officer needs this authority so that he can immediately stop operations that are found to endanger public health and safety. A delay in stopping operations that are immediately dangerous could cause serious damage to the public health and safety. Likewise, the suggestion that the order for an immediate temporary suspension should only be served on the holder might delay the stopping of a dangerous activity for too long a period and result in damage to the public health and safety. Neither of the suggestions was adopted.

A final comment on this section recommended an on-the-ground inspection in connection with an order to temporarily suspend operations immediately. An inspection could delay the stopping of harmful operations to the detriment of the public. The suggestion has not been adopted.

Suspension and Termination of Right-of-Way Authorizations

Among the comments received on this section, was a suggestion that the words "unwilling and unable", words that are judgmental, be removed from paragraph (b). The suggestion has been adopted and the words have been deleted leaving the failure to comply as the only requirement.

The comments on this section suggested that a provision be included for a hearing on a notice to suspend or terminate a grant or permit. The rulemaking has been amended to provide for an appropriate

administrative hearing pursuant to section 554 of title V of the United States Code for right-of-way grants that constitute an easement. The administrative hearing is required by section 506 of the Federal Land Policy and Management Act and was inadvertently omitted from the proposed rulemaking.

Another comment on the section wanted special consideration given to those right-of-way grants used for silviculture activities with regard to the question of abandonment. This suggestion was not adopted because the section gives any grant or permit holder, including those involved in silviculture activities, an opportunity to show that they have not abandoned a grant or permit.

Disposition of Improvements Upon Termination

The two comments made on this section were contradictory. One comment expressed the view that the section gave the authorized officer too much discretion and another comment wanted the authorized officer to be given discretion to allow a holder to leave improvements on a right-of-way grant or temporary use permit area. The section has been changed to give the authorized officer authority to permit the holder to leave some or all of the improvements on a grant or permit area.

Change in Federal Jurisdiction on Disposal of Lands

One comment on this section was of the view that the reference to assignment in paragraph (b) was not clear and should be clarified. Paragraph (b) provides for an assignment to the new owner as one of the alternatives when the lands covered by a right-of-way grant or temporary use permit are transferred out of Federal ownership. Any one of the alternatives can be used and no change has been made in paragraph (b). Another comment recommended that the section be amended to require that a holder be notified of any change in the land status. No specific notice is provided for in this rulemaking, but the holder will have notice of any transfer or disposal of public lands under procedures provided in other regulations covering transfers and disposals. Further, under most circumstances, the issue will be discussed with the holder by the local Bureau of Land Management office prior to a change. This recommendation was not adopted.

Amendments

The comments on this section were concerned with the requirement that an

amendment, either requested by the holder or directed by the authorized officer, would have to be filed under the provisions of this rulemaking and the holder's rights might be infringed. Since the Federal Land Policy and Management Act repealed virtually all existing authority to grant a right-of-way, the only authority remaining for issuing a right-of-way is title V of the Federal Land Policy and Management Act and all changes must be issued under that authority. Every effort, consistent with the law, will be made to accommodate an existing right-of-way that must be amended.

Assignments

The comments on this section were concerned with the requirement that an assignee must meet the requirements of this rulemaking and the fact that assignments had to have the approval of the authorized officer before they could be completed. The authorized officer has a responsibility to be sure that an assignee is qualified to hold a right-of-way grant or temporary use permit and will carry out the obligations imposed by such grant or permit. If these conditions are met, the authorized officer will approve an assignment. If grants or permits could be freely assigned, there would be no way for the authorized officer, in carrying out his responsibility to manage the public lands, to know if the assignee was a responsible individual. This provision is necessary for the proper protection of the public lands and no change has been made.

Renewals of Right-of-Way Grants and Temporary Use Permits

A comment on this section wanted the provision allowing the authorized officer to modify a right-of-way grant upon renewal to include new requirements of current Federal and State laws, regulations and land use plans to be deleted. This provision has not been changed. It authorizes the updating of a right-of-way grant to include provisions that the holder may have to meet even if they are not in the grant and other necessary requirements so that the grant will be in compliance with existing authorities.

Several comments raised questions with regard to the denial of the right to appeal by paragraph (d) as it applies to renewals under paragraphs (b) and (c). In those instances where a grant issued under this rulemaking does not carry a right of renewal, the question of renewal was decided at the time the grant was issued, with the right to appeal the issue of non-renewability. This provision allows the authorized officer to look at

any new circumstances that may have arisen since making the decision not to allow a renewal and to consider them. This is an extraordinary opportunity, one that would not ordinarily be available to the grant holder and should not be reviewable, as was the question of renewability at the time the grant was issued. Some of the comments raised questions about grants that were issued under authority repealed by the Federal Land Policy and Management Act. The grants issued under authority that has been repealed cannot be renewed under that repealed authority. If an additional time is needed by a grant holder, an application for a grant under the provisions of title V of the Federal Land Policy and Management Act must now be filed. When the request for a new grant is considered, the question of renewability will be considered and handled in accordance with the provisions of this rulemaking. The authorized officer does not have any authority to grant a renewal of an existing right-of-way grant under statutory authority that has been repealed.

Finally, permits do not contain a provision for renewal as a term and condition under the provisions of this rulemaking. This section, as in the case of grants, allows the authorized officer to examine a temporary use permit to see if circumstances make it appropriate to renew it. If a renewal is denied, the holder can apply for a new permit under the rulemaking and exercise the appeal rights.

Appeals

The comments on this section were directed at paragraph (b) which keeps all decisions of the authorized officer in effect pending appeal unless the Secretary of the Interior determines otherwise. This procedure allows a holder to request the Secretary to make a ruling that a decision should not be effective during the appeal process, but will keep the decision in effect if no such ruling is granted. This authority is needed so that the authorized officer's management decisions can be effective. No change has been made in the section.

Applications for Electric Power Transmission Lines of 66 kV or Above

The comments on this section objected to the wheeling provisions contained in the subpart. The wheeling provisions are a continuation of provisions in the current right-of-way regulations, except that the Department of Energy has the responsibility for carrying out those provisions. Title V of the Federal Land Policy and Management Act requires that all right-

of-way grants comply with the provisions of the Federal Power Act of 1935, including the wheeling provisions. After consultation with the Department of Energy, the wheeling provisions were continued in this rulemaking and only slight changes have been made from the previous regulations. Questions of cost sharing, etc., will have to be worked out with the Department of Energy by an applicant whose application falls under the provisions of this subpart. No substantive changes have been made in this subpart.

Designation of Right-of-Way Corridors

While most of the comments on this subpart seemed to support the concept, one comment did object to its use for railroads. The main concern expressed in the comments was that there be adequate consideration of the question of the engineering and technical compatibility of the various uses made of a corridor, with special emphasis on the reliability of service from or through facilities sited within a corridor. The rulemaking covers these situations.

Other comments focused on the need for public input into the designation process, as well as input from State and local governments that are concerned with the designation process. One comment wanted to be sure the existing holder of an area designated as a corridor would have a chance to express its concern. The section on public participation has been revised to give greater emphasis to broad public input into the designation process. All users will have ample opportunity to participate in this designation process.

Another change to the subpart on corridors was the addition of language that makes it clear that the designation of an area as a corridor does not mean that an application for a right-of-way grant in that corridor will be approved, but makes it clear that such applications are subject to the same approval process as all other applications for right-of-way grants.

Reservation to Federal Agencies

A couple of comments pointed out the numbering error in this subpart which has been corrected. One comment noted that there was no mention of a term of a reservation made to Federal agencies. The term of a reservation shall be what the authorized officer determines to be an appropriate term for the purpose of the reservation. This term will be arrived at by discussion between the parties to the reservation.

Editorial changes and corrections have been made as necessary.

The principal author of this final rulemaking is Robert E. Mollohan,

Division of Rights-of-Way and Project Review, assisted by the Office of Legislation and Regulatory Management, Bureau of Land Management, and the Office of the Solicitor, Department of the Interior.

It is hereby determined that the publication of this final rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 or 43 CFR Part 14.

Under the authority of title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761-1771), Group 2800, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is revised as follows.

Cecil D. Andrus,
Secretary of the Interior.
June 26, 1980.

1. Part 2800 is revised to read as follows:

Group 2800—Use; Rights-of-Way

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

Subpart 2800—Rights-of-Way; General

- Sec.
2800.0-1 Purpose.
2800.0-2 Objectives.
2800.0-3 Authority.
2800.0-5 Definitions.
2800.0-7 Scope.

Subpart 2801—Terms and Conditions of Rights-of-Way Grants and Temporary Use Permits

- 2801.1 Nature of interest.
2801.1-1 Nature of right-of-way interest.
2801.1-2 Reciprocal grants.
2801.2 Terms and conditions of interests granted.
2801.3 Unauthorized occupancy.

Subpart 2802—Applications

- 2802.1 Pre-application activity.
2802.2 Application filing activity.
2802.2-1 Application filing.
2802.2-2 Coordination of applications.
2802.3 Application content.
2802.3-1 Applicant qualifications and disclosure.
2802.3-2 Technical and financial capability.
2802.3-3 Project description.
2802.3-4 Environmental protection plan.
2802.3-5 Additional information.
2802.3-6 Maps.
2802.4 Application processing.
2802.5 Special application procedures.

Subpart 2803—Administration of Rights Granted

Sec.

- 2803.1 General requirements.
2803.1-1 Reimbursement of costs.
2803.1-2 Rental fees.
2803.1-3 Bonding.
2803.1-4 Liability.
2803.2 Holder activity.
2803.3 Immediate temporary suspension of activities.
2803.4 Suspension and termination of grants and permits.
2803.4-1 Disposition of improvements upon termination.
2803.5 Change in Federal jurisdiction or disposal of lands.
2803.6 Amendments, assignments and renewals.
2803.6-1 Amendments.
2803.6-2 Amendments to existing railroad grants.
2803.6-3 Assignments.
2803.6-4 Reimbursement of costs for assignments.
2803.6-5 Renewals of right-of-way grants and temporary use permits.

Subpart 2804—Appeals

- 2804.1 Appeals procedure—general.

Subpart 2805—Applications for Electric Power Transmission Line of 66 kV or Above

- 2805.1 Application requirements.

Subpart 2806—Right-of-Way Corridor Designation

- 2806.1 Corridor designation.
2806.2 Designation criteria.
2806.2-1 Procedures for designation.

Subpart 2807—Reservations to Federal Agencies

- 2807.1 Application filing.
2807.1-1 Document preparation.
2807.1-2 Termination and suspension.

Authority: 43 U.S.C. 1761-1771.

Subpart 2800—Rights-of-Way; General

§ 2800.0-1 Purpose.

The purpose of the regulations in this part is to establish procedures for the orderly and timely processing of applications, grants, permits, amendments, assignments and terminations for rights-of-way and permits over, upon, under or through public lands pursuant to title V, Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761-1771).

§ 2800.0-2 Objectives

It is the objective of the Secretary of the Interior to grant rights-of-way and temporary use permits, covered by the regulations in this part, to any qualified individual, business entity, or governmental entity and to regulate, control and direct the use of said rights-of-way on public land so as to:

- (a) Protect the natural resources associated with the public lands and adjacent private or other lands administered by a government agency.

(b) Prevent unnecessary or undue environmental damage to the lands and resources.

(c) Promote the utilization of rights-of-way in common with respect to engineering and technological compatibility, national security and land use plans.

(d) Coordinate, to the fullest extent possible, all actions taken pursuant to this part with State and local governments, interested individuals and appropriate quasi-public entities.

§ 2800.0-3 Authority.

The regulations for this subpart are issued under title V of the Federal Land Policy and Management Act of 1976.

§ 2800.0-5 Definitions.

As used in this part, the term:

(a) "Act" means the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701 et seq.).

(b) "Secretary" means the Secretary of the Interior.

(c) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(d) "Public lands" means any lands or interest in land owned by the United States and administered by the Secretary through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(e) "Applicant" means any qualified individual, partnership, corporation, association or other business entity, and any Federal, State or local governmental entity including municipal corporations which applies for a right-of-way grant or a temporary use permit.

(f) "Holder" means any applicant who has received a right-of-way grant or temporary use permit.

(g) "Right-of-way" means the public lands authorized to be used or occupied pursuant to a right-of-way grant.

(h) "Right-of-way grant" means an instrument issued pursuant to title V of the act authorizing the use of a right-of-way over, upon, under or through public lands for construction, operation, maintenance and termination of a project.

(i) "Temporary use permit" means a revocable non-possessory, non-exclusive privilege, authorizing temporary use of public lands in connection with construction, operation, maintenance, or termination of a project.

(j) "Facilities" means improvements constructed or to be constructed or used

within a right-of-way pursuant to a right-of-way grant.

(k) "Project" means the transportation or other system for which the right-of-way is authorized.

(l) "Right-of-way corridor" means a parcel of land either linear or areal in character that has been identified, by law, Secretarial Order, through the land use planning process or other management decision process as being suitable to accommodate more than one type of right-of-way or one or more rights-of-way which are similar, identical, or compatible.

(m) "Casual use" means activities that involve practices which do not ordinarily cause any appreciable disturbance or damage to the public lands, resources or improvements and, therefore, do not require a right-of-way grant or temporary use permit under this title.

§ 2800.0-7 Scope.

This part sets forth regulations governing:

(a) Issuing, amending or renewing right-of-way grants for necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under or through public lands, including but not limited to:

(1) Reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels and other facilities and systems for the impoundment, storage, transportation or distribution of water;

(2) Pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) Systems for generation, transmission and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935 (16 U.S.C. 791);

(5) Systems for transmission or reception of radio, television, telephone, telegraph and other electronic signals, and other means of communication;

(6) Roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways or other means of transportation except where such

facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System;

(7) Such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under or through such lands; or

(8) Rights-of-way to any Federal department or agency for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any product produced therefrom.

(b) Temporary use of additional public lands for such purposes as the Secretary determines to be reasonably necessary for construction, operation, maintenance or termination of rights-of-way, or for access to the project or a portion of the project.

(c) However, the regulations contained in this part do not cover right-of-way grants for Federal Aid Highways, roads constructed or used pursuant to cost share or reciprocal road use agreements, wilderness areas, and oil, gas and petroleum products pipelines except as provided for in § 2800.0-7(a)(8) of this title.

Subpart 2801—Terms and Conditions of Rights-of-Way Grants and Temporary Use Permits

§ 2801.1 Nature of interest.

§ 2801.1-1 Nature of right-of-way interest.

(a) All rights in public lands subject to a right-of-way grant or temporary use permit not expressly granted are retained and may be exercised by the United States. These rights include, but are not limited to:

(1) A continuing right of access onto the public lands covered by the right-of-way grant or temporary use permit, and upon reasonable notice to the holder, access and entry to any facility constructed on the right-of-way or permit area;

(2) The right to require common use of the right-of-way, and the right to authorize use of the right-of-way for compatible uses (including the subsurface and air space).

(b) A right-of-way grant or temporary use permit may be used only for the purposes specified in the authorization. The holder may allow others to use the land as his/her agent in exercising the rights granted.

(c) All right-of-way grants and temporary use permits shall be issued subject to valid existing rights.

(d) A right-of-way grant or temporary use permit shall not give or authorize the holder to take from the public lands any

mineral or vegetative material, including timber, without securing authorization under the Materials Act (30 U.S.C. 601 et seq.), and paying in advance the fair market value of the material cut, removed, used, or destroyed. However, common varieties of stone and soil necessarily removed in the construction of a project may be used elsewhere along the same right-of-way or permit area in the construction of the project without additional authorization and payment. The holder shall be allowed in the performance of normal maintenance to do minor trimming, pruning and clearing of vegetative material within the right-of-way or permit area and around facilities constructed thereon without additional authorization and payments. At his discretion and when it is in the public interest, the authorized officer may in lieu of requiring an advance payment for any mineral or vegetative materials, including timber, cut or excavated, require the holder to stockpile or stack the material as designated locations for later disposal by the United States.

(e) A holder of a right-of-way grant or temporary use permit may assign a grant or permit to another, provided the holder obtains the written approval of the authorized officer.

(f) The holder of a right-of-way grant may authorize other parties to use a facility constructed, except for roads, on the right-of-way with the prior written consent of the authorized officer and charge for such use. In any such arrangement, the holder shall continue to be responsible for compliance with all conditions of the grant. This paragraph does not limit in any way the authority of the authorized officer to issue additional right-of-way grants or temporary use permits for compatible uses on or adjacent to the right-of-way, nor does it authorize the holder to impose charges for the use of lands made subject to such additional right-of-way grants or temporary use permits.

(g) Each right-of-way grant or temporary use permit shall describe the public lands to be used or occupied and the grant or permit shall be limited to those lands which the authorized officer determines:

- (1) Will be occupied by the facilities authorized;
 - (2) To be necessary for the construction, operation, maintenance, and termination of the authorized facilities;
 - (3) To be necessary to protect the public health and safety; and
 - (4) Will do no unnecessary damage to the environment.
- (h) Each grant or permit shall specify its term. The term of the grant shall be

limited to a reasonable period. A reasonable period for a right-of-way grant may range from a month to a year or a term of years to perpetuity. The term for a temporary use shall not exceed 3 years. In determining the period for any specific grant or permit, the authorized officer shall provide for a term no longer than is necessary to accomplish the purpose of the authorization. Factors to be considered by the authorized officer for the purpose of establishing an equitable term pertaining to the use include, but are not limited to:

- (1) Land use plans and other management decisions;
- (2) Public benefits provided;
- (3) Cost and useful life of the facility;
- (4) Project financing; and
- (5) Time limitations imposed by required licenses or permits that the holder is required to secure from other Federal or State agencies; and
- (6) Any other limitations imposed by Federal or State law on the holder which would indicate that the right-of-way grant not be limited to a term of years.

(i) Each grant issued for a term of 20 years or more shall contain a provision requiring periodic review of the grant at the end of the twentieth year and at regular intervals thereafter not to exceed 10 years.

(j) Each grant shall have a provision stating whether it is renewable or not and if renewable, the terms and conditions applicable to the renewal.

(k) Each grant shall not only comply with the regulations of this part, but also, comply with the provisions of any other applicable law and implementing regulations as appropriate.

§ 2801.1-2 Reciprocal grants.

When the authorized officer determines from an analysis of land use plans or other management decisions that a right-of-way for an access road is or shall be needed by the United States across lands directly or indirectly owned or controlled by an applicant for a right-of-way grant, he or she shall, if it is determined to be in the public interest, require the applicant, as a condition to receiving a right-of-way grant, to grant the United States an equivalent right-of-way that is adequate in duration and rights.

§ 2801.2 Terms and conditions of interest granted.

(a) An applicant by accepting a right-of-way grant, temporary use permit, assignment, amendment or renewal agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the

Secretary may waive in a particular case:

(1) To the extent practicable, all State and Federal laws applicable to the authorized use and such additional State and Federal laws, along with the implementing regulations, that may be enacted and issued during the term of the grant or permit.

(2) That in the construction, operation, maintenance and termination of the authorized use, there shall be no discrimination against any employee or applicant for employment because of race, creed, color, sex or national origin and all subcontracts shall include an identical provision.

(3) To rebuild and repair roads, fences, and established trails that may be destroyed or damaged by construction, operation or maintenance of the project and to build and maintain suitable crossings for existing roads and significant trails that intersect the project.

(4) To do everything reasonably within his or her power, both independently and upon request of the authorized officer, to prevent and suppress fires on or in the immediate vicinity of the right-of-way or permit area. This includes making available such construction and maintenance forces as may be reasonably obtained for the suppression of fires.

(b) All right-of-way grants and temporary use permits issued, renewed, amended or assigned under these regulations shall contain such terms, conditions, and stipulations as may be required by the authorized officer regarding extent, duration, survey, location, construction, operation, maintenance, use and termination. The authorized officer shall impose stipulations which shall include, but shall not be limited to:

(1) Requirements for restoration, revegetation and curtailment of erosion of the surface of the land, or any other rehabilitation measure determined necessary;

(2) Requirements to ensure that activities in connection with the grant or permit shall not violate applicable air and water quality standards or related facility siting standards established by or pursuant to applicable Federal or State law;

(3) Requirements designed to control or prevent damage to scenic, esthetic, cultural and environmental values (including damage to fish and wildlife habitat), damage to Federal property and hazards to public health and safety;

(4) Requirements to protect the interests of individuals living in the general area who rely on the fish,

wildlife and biotic resources of the area for subsistence purposes;

(5) Requirements to ensure that the facilities to be constructed, used and operated on the prescribed location are maintained and operated in a manner consistent with the grant or permit; and

(6) Requirements for compliance with State standards for public health and safety, environmental protection and siting, construction, operation and maintenance when those standards are more stringent than Federal standards.

§ 2801.3 Unauthorized occupancy.

Any occupancy or use of the public lands, other than casual use as set forth in §§ 2800.0-5(m) and 2802.1(d) of this title, without authorization shall be considered a trespass and shall subject the trespasser to prosecution and liability for the trespass. Issuance of a right-of-way grant or temporary use permit to a trespasser shall be made in accordance with § 9239.0-9 of this title, except for those unauthorized uses under § 2802.5 of this title. This provision applies to all unauthorized use of the public lands and precludes the issuance of a right-of-way grant or temporary use permit until the trespass case has been settled. Once the trespass case has been settled, a new grant or permit may be made by the authorized officer in accordance with the procedures set forth in this part.

Subpart 2802—Applications

§ 2802.1 Preapplication activity.

(a) Anyone interested in obtaining a right-of-way grant or temporary use permit involving use of public lands is encouraged to establish early contact with the Bureau of Land Management office responsible for management of the affected public lands so that potential constraints may be identified, the proposal may be considered in land use plans, and processing of an application may be tentatively scheduled. The appropriate officer shall furnish the proponent with guidance and information about:

- (1) Possible land use conflicts as identified by review of land use plans, land ownership records and other available information sources;
- (2) Application procedures and probable time requirements;
- (3) Applicant qualifications;
- (4) Cost reimbursement requirements;
- (5) Associated clearances, permits and licenses which may be required in addition to, but not in place of the grants or permits required under these regulations;
- (6) Environmental and management considerations;

(7) Any other special conditions that can be identified;

(8) Identification of on-the-ground investigations which may be required in order to complete the application; and

(9) Coordination with Federal, State and local government agencies.

(b) Any information furnished by the proponent in connection with a preapplication activity or use which he/she requests not be disclosed, shall be protected to the extent consistent with the Freedom of Information Act (5 U.S.C. 552).

(c) No right-of-way applications processing work, other than that incurred in the processing of applications for permits for temporary use of public lands in furtherance of the filing of an application and pre-application guidance under paragraph (a) of this section, shall be undertaken by the authorized officer prior to the filing of an application together with advance payment as required by § 2803.1-1 of this title. Such processing work includes, but is not limited to, special studies such as environmental analyses, environmental statements, engineering surveys, resource inventories and detailed land use or record analyses.

(d) The prospective applicant is authorized to go upon the public lands to perform casual acts related to data collection necessary for the filing of an acceptable application. These casual acts or activities include, but are not limited to: (1) vehicle use on existing roads; (2) sampling; (3) marking of routes or sites, including surveying; or (4) other activities that do not unduly disturb the surface or require the removal of vegetation.

If, however, the authorized officer determines that appreciable surface or vegetative disturbance will occur or is a real possibility he shall issue a temporary use permit with appropriate terms, conditions, and special stipulations pursuant to § 2801.2 of this title.

(e) When, during pre-application discussions with the prospective applicant, the authorized officer supplies the prospective applicant with information set out in paragraph (a) of this section, the authorized officer shall also inform appropriate Federal, State and local government agencies that preapplication discussions have begun in order to assure that effective coordination between the prospective applicant and all responsible government agencies is initiated as soon as possible.

§ 2802.2 Application filing activity.

§ 2802.2-1 Application filing.

Applications for a right-of-way grant or temporary use permit shall be filed with either the Area Manager, the District Manager or the State Director having jurisdiction over the affected public lands except:

(a) Applications for Federal Aid Highways shall be filed pursuant to 23 U.S.C. 107, 317, as set out in 43 CFR 2821;

(b) Applications for cost-share roads shall be filed pursuant to 43 CFR 2812;

(c) Applications for oil and gas pipelines shall be filed pursuant to 43 CFR 2880; and

(d) Applications for projects on lands under the jurisdiction of 2 or more administrative units of the Bureau of Land Management may be filed at any of the Bureau of Land Management offices having jurisdiction over part of the project, and the applicant shall be notified where subsequent communications shall be directed.

§ 2802.2-2 Coordination of applications.

Applicants filing with any other Federal department or agency for a license, certificate of public convenience and necessity or any other authorization for a project involving a right-of-way on public lands, shall simultaneously file an application under this part with the Bureau of Land Management for a right-of-way grant. To minimize duplication, pertinent information from the application to such department or agency may be appended or referenced in the application for the right-of-way grant.

§ 2802.3 Application content.

§ 2802.3-1 Applicant qualifications and disclosure.

(a) An applicant for a right-of-way grant or temporary use permit shall be a citizen of the United States, an association of such citizens, organized under the laws of the United States or of any State thereof, a corporation or other business entity organized or licensed under the laws of the United States or of any State thereof, a Federal agency, or a State or local government. Aliens may not acquire or hold any direct or indirect interest in right-of-way grants or temporary use permits except that they may own or control stock in corporations holding right-of-way grants or temporary use permits, if the laws of their country do not deny similar or like privileges to citizens of the United States. If 3 percent or more of any class of the stock of a corporation is held or controlled by aliens who are citizens of a country denying similar or like

privileges to United States citizens, its application shall be denied. A right-of-way or temporary use permit shall not be granted to a minor, but either may be granted to legal guardians or trustees of minors in their behalf.

(b) An application by a private corporation shall be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official where the corporation was organized, and a copy of its bylaws, duly certified by the secretary of the corporation.

(c) A corporation, other than a private corporation, shall file a copy of the law under which it was formed and provide proof of organization under the same, and a copy of its bylaws, duly certified by the secretary of the corporation.

(d) When a corporation is doing business in a State other than that in which it is incorporated, it shall submit a certificate from the Secretary of State or other proper official of that State indicating that it has complied with the laws of the State governing foreign corporations to the extent required to entitle the company to operate in such State, and that the corporation is in good standing under the laws of that State.

(e) A copy of the resolution by the board of directors of the corporation or other documents authorizing the filing of the application shall also be filed.

(f) If the corporation has previously filed with the Department the papers required by this subpart, and there have not been any amendments or revisions of the corporation's charter, articles of incorporation or bylaws, the requirements of this subpart may be met in subsequent applications, by specific reference to the previous filing by date, place and case number.

(g) If the applicant is a partnership, association or other unincorporated entity, the application shall be accompanied by a certified copy of the articles of association, partnership agreement, or other similar document creating the entity, if any. The application shall be signed by each partner or member of the entity, unless the entity shows evidence in the form of a resolution or similar document that one member has been authorized to sign in behalf of the others. In the absence of such resolution each partner shall furnish the evidence of qualification which would be required if the partner or member were applying separately.

(h) If the applicant is a State or local government, or agency, or instrumentality thereof, the application shall be accompanied by a statement to that effect and a copy of the law, resolution, order, or other authorization under which the application is made.

(i) Each application by a partnership, corporation, association or other business entity shall, upon the request of the authorized officer, disclose the identity of the participants in the entity and shall include where applicable:

(1) The name, address and citizenship of each participant (partner, associate or other);

(2) Where the applicant is a corporation: the name, address, and citizenship of each shareholder owning 3 percent or more of each class of shares, together with the number and percentage of any class of voting shares of the entity which each shareholder is authorized to vote; and

(3) The name, address, and citizenship of each affiliate of the entity. Where an affiliate is controlled by the entity, the application shall disclose the number of shares and the percentage of each class of voting stock of that affiliate owned, directly or indirectly, by the entity. If an affiliate controls the entity, the number of shares and the percentage of each class of voting stock of the entity owned, directly or indirectly, by the affiliate shall be included.

§ 2802.3-2 Technical and financial capability.

The applicant shall furnish evidence satisfactory to the authorized officer that the applicant has, or prior to commencement of construction shall have, the technical and financial capability to construct, operate, maintain and terminate the project for which authorization is requested.

§ 2802.3-3 Project description.

(a) The applicant shall furnish an explanation of how the project will interrelate with existing and future projects and other developments on the public lands.

(b) The project description shall be in sufficient detail to enable the authorized officer to determine:

- (1) Its impact on the environment;
- (2) Any benefits provided to the public;
- (3) The safety of the proposal; and
- (4) The specific public lands proposed to be occupied or used;

(c) When required by the authorized officer, the applicant shall also submit the following:

- (1) A description of the proposed facility;
- (2) An estimated schedule for construction of all facilities together with anticipated manpower requirements for each stage of construction;
- (3) A description of the construction techniques to be used; and

(4) A description of the applicant's alternative route considerations.

§ 2802.3-4 Environmental protection plan.

If the authorized officer determines that the issuance of the right-of-way authorization requires the preparation of an environmental statement, the applicant shall submit a plan for the protection and rehabilitation of the environment during construction, operation, maintenance and termination of the project.

§ 2802.3-5 Additional information.

The applicant shall furnish any other information and data required by the authorized officer to enable him/her to make a decision on the application.

§ 2802.3-6 Maps.

(a) The authorized officer may at his/her discretion require the applicant to file a map with the application. When the authorized officer determines not to require a detailed map prepared in accordance with paragraph (b) of this section, the applicant shall attach to the application a map such as a United States Geological Survey Quadrangle map or aerial photograph showing the approximate location of the facility and processing may proceed. Where the application is accepted without a detailed survey map, the applicant shall be notified that a map pursuant to paragraph (b) of this section shall be required prior to the issuance of the grant or permit, or within 60 days of completion of construction, as determined by the authorized officer, except that the authorized officer may waive all or part of the requirements of paragraph (b) of this section for maps for temporary use permits. When the authorization is for use of an existing road controlled by the United States, any map showing said road shall suffice and the requirements of paragraph (b) of this section shall not apply in this situation.

(b) Maps or aerial photographs portraying linear rights-of-way, as a minimum, shall show the following data:

(1) The bearing and distance of the traverse line or the true centerline of the facility as constructed;

(2) At least one tie to a public land survey monument to either the beginning or ending point of the right-of-way. If a public land survey monument is not within a reasonable distance as determined by the authorized officer, the survey shall be tied to either a relatively permanent man-made structure or monument or some prominent natural feature. However, when the right-of-way crosses both public lands and lands other than public lands, each parcel of

public land crossed by said right-of-way must be tied to a public land survey monument; or if the map shows a continuous survey from the beginning point to the ending point of the project regardless of land ownership, then only one corner tie at either the initial or terminal point is required;

(3) The exterior limits of the right-of-way and the width thereof;

(4) A north arrow;

(5) All subdivisions of each section or portion thereof crossed by the right-of-way, with the subdivisions, sections, townships, and ranges clearly and properly noted; and

(6) Scale of the map. The map scale shall be such that all of the required information shown thereon is legible.

(c) Maps portraying non-linear or site-type rights-of-way shall include the requirements of paragraphs (b)(4), (5), and (6) of this section. In addition, the map shall show, as a minimum, the following data:

(1) The bearing and distance of each exterior sideline of the site; and

(2) At least one angle point of the survey shall be tied to a public land survey monument, as provided for in paragraph (b)(2) of this section.

(d) In order to facilitate proper management of the public lands and to assist the authorized officer in developing a sound transportation plan, any person or State or local government which has constructed public highways under the authority of R.S. 2477 (43 U.S.C. 932, repealed October 21, 1976), is provided the opportunity to file within 3 years of the effective date of these regulations a map showing the location of all such public highways constructed under R.S. 2477. Maps filed pursuant to this paragraph should, as a minimum, be a county highway map showing all county roads located on the public lands, a State highway map showing State highways located on public land, and in the case of a municipality, a street or road map showing the location of city streets or roads. An individual who has constructed a public road pursuant to R.S. 2477 should, as a minimum, submit a United States Geological Survey Quadrangle showing the location of said road on public land. The submission of such maps depicting the location of alleged R.S. 2477 highways shall not be conclusive evidence of their existence. Similarly, failure to depict such roads shall not preclude a later finding as to their existence.

§ 2802.4 Application processing.

(a) The authorized officer shall acknowledge, in writing, receipt of the application and initial cost

reimbursement payment required by § 2803.1-1 of this title. An application may be denied if the authorized officer determines that:

(1) The proposed right-of-way or permit would be inconsistent with the purpose for which the public lands are managed;

(2) That the proposed right-of-way or permit would not be in the public interest;

(3) The applicant is not qualified;

(4) The right-of-way or permit would otherwise be inconsistent with the act or other applicable laws; or

(5) The applicant does not or cannot demonstrate that he/she has the technical or financial capacity.

(b) Upon receipt of the acknowledgement, the applicant may continue his or her occupancy of the public land pursuant to § 2802.1(d) of this title to continue to gather data necessary to perfect the application. However, if the applicant finds or the authorized officer determines that surface disturbing activities will occur in gathering the necessary data to perfect the application, the applicant shall file an application for a temporary use permit prior to entering into such activities on the public land.

(c) The authorized officer may require the applicant for a right-of-way grant to submit such additional information as he deems necessary for review of the application. All requests for additional information shall be in writing. Where the authorized officer determines that the information supplied by the applicant is incomplete or does not conform to the act or these regulations, the authorized officer shall notify the applicant of these deficiencies and afford the applicant an opportunity to file a correction. Where a deficiency notice has not been adequately complied with, the authorized officer may reject the application or notify the applicant of the continuing deficiency and afford the applicant an opportunity to file a correction.

(d) Prior to issuing a right-of-way grant or temporary use permit, the authorized officer shall:

(1) Complete an environmental analysis in accordance with the National Environmental Policy Act of 1969;

(2) Determine compliance of the applicant's proposed plans with applicable Federal and State laws;

(3) Consult with all other Federal, State, and local agencies having an interest, as appropriate; and

(4) Take any other action necessary to fully evaluate and make a decision to approve or deny the application and

prescribe suitable terms and conditions for the grant or permit.

(e) The authorized officer may hold public meetings on an application for a right-of-way grant or temporary use permit if he determines that such meetings are appropriate and that sufficient public interest exists to warrant the time and expense of such meetings. Notice of public meetings shall be published in the Federal Register or in local newspapers or in both.

(f) A right-of-way grant or temporary use permit need not conform to the applicant's proposal, but may contain such modifications, terms, stipulations or conditions, including changes in route or site location on public lands, as the authorized officer determines to be appropriate.

(g) No right-of-way grant or temporary use permit shall be in effect until the applicant has accepted, in writing, the terms and conditions of the grant or permit. Written acceptance shall constitute an agreement between the applicant and the United States that, in consideration of the right to use public lands, the applicant shall comply with all terms and conditions contained in the authorization and the provisions of applicable laws and regulations.

(h) The authorized officer may place a provision in a right-of-way grant requiring that no construction on or use of the right-of-way shall occur until detailed construction or use plans have been submitted to the authorized officer for approval and one or more notices to proceed with that construction or use have been issued by the authorized officer. This requirement may be imposed for all or any part of the right-of-way.

§ 2802.5 Special application procedures.

An applicant filing for a right-of-way within 4 years from the effective date of this subpart for an unauthorized right-of-way that existed on public land prior to October 21, 1976, is not:

(a) Required to reimburse the United States for costs incurred for processing an application and for the preparation of reports and statements pursuant to the National Environmental Policy Act of 1969 (see § 2803.1-1(a)(1)) which are above the schedule shown in § 2803.1-1(a)(3)(i) of this title.

(b) Required to reimburse the United States for costs incurred incident to a right-of-way for monitoring (the construction, operation, maintenance and termination) of authorized facilities as required in § 2803.1-1(b) of this title.

(c) Required to pay rental fees for the period of unauthorized land use.

Subpart 2803—Administration of Rights Granted

§ 2803.1 General requirements.

§ 2803.1-1 Reimbursement of costs.

(a)(1) An applicant for a right-of-way grant or a temporary use permit shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), before the right-of-way grant or temporary use permit shall be issued under the regulations of this title.

(2) The regulations contained in this subpart do not apply to:

(i) State or local governments or agencies or instrumentalities thereof where the public lands shall be used for governmental purposes and such lands and resources shall continue to serve the general public; except (A) as to right-of-way grants or temporary use permits issued to State or local governments or agencies or instrumentalities thereof or a municipal utility or cooperative whose principal source of revenue is derived from charges levied on customers for services rendered that are similar to services rendered by a profit making corporation or business enterprise, or (B) as to right-of-way grants or temporary use permits issued under section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 180);

(ii) Road use agreements or reciprocal road agreements; or

(iii) Federal agencies.

(3) An applicant shall submit with each application a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way grant or temporary use permit for crossing public lands (e.g., for powerlines, pipelines, roads and other linear uses).

Length	Payments
Less than 5 miles.....	\$50 per mile or fraction thereof.
5 to 20 miles.....	\$500.
20 miles and over.....	\$500 for each 20 miles or fraction thereof.

(ii) Each right-of-way grant or temporary use permit for non-linear uses (e.g. for communication sites, reservoir sites, plant sites, and camp sites)—\$250 for each 40 acres or fraction thereof.

(4) When an application is received, the authorized officer shall estimate the costs expected to be incurred by the United States in processing the application. If, in the judgment of the authorized officer, such costs will exceed the payment required by

paragraph (a)(3) of this section by an amount which is greater than the cost of maintaining actual cost records for the application review process, the authorized officer shall require the applicant to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(5) Prior to the issuance of a right-of-way grant or temporary use permit, the applicant shall be required to pay additional amounts to the extent the costs of the United States have exceeded the payments required by paragraphs (a)(3) and (4) of this section.

(6) An applicant whose application is denied shall be responsible for administrative and other costs incurred by the United States in processing its application, and such amounts as have not been paid in accordance with paragraphs (a)(3) and (4) of this section shall be due within 30 days of receipt of notice from the authorized officer of the amount due.

(7) An applicant which withdraws its application before a decision is reached on said application is responsible for costs incurred by the United States in processing such application up to the date upon which the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred by the United States in terminating the application review process. Reimbursement of such costs shall be due within 30 days of receipt of notice from the authorized officer of the amount due.

(8) If payment, as required by paragraphs (a)(4) and (b)(3) of this section, exceeds actual costs to the United States, refund may be made by the authorized officer from applicable funds under authority of 43 U.S.C. 1734, or the authorized officer may adjust the next billing to reflect the overpayment previously received. Neither an applicant nor a holder shall set off or otherwise deduct any debt due to or any sum claimed to be owed them by the United States without the prior written approval of the authorized officer.

(9) The authorized officer shall, on request, give an applicant or a prospective applicant an estimate, based on the best available cost information, of the costs which would be incurred by the United States in processing an application. However, reimbursement shall not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

(10) When 2 or more applications for right-of-way grants are filed which the

authorized officer determines to be in competition with each other, each applicant shall reimburse the United States according to subparagraphs (3) through (7) of this section, except that those costs which are not readily identifiable with one of the applications, such as costs for portions of an environmental statement that relate to all of the proposals generally, shall be paid by each of the applicants in equal shares.

(11) When through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity apply together for a right-of-way grant or temporary use permit, each such applicant shall be jointly and severally liable for costs under § 2803.1-1 of this title.

(12) When 2 or more noncompeting applications for right-of-way grants are received for what, in the judgment of the authorized officer, is one right-of-way system, all the applicants shall be jointly and severally liable for costs under § 2803.1-1 of this title for the entire system; subject, however, to the provisions of subparagraph (11) of this paragraph.

(13) The regulations contained in § 2803.1-1 of this title are applicable to all applications for right-of-way grants or temporary use permits incident to rights-of-way over the public lands pending on June 1, 1975.

(b)(1) After issuance of a right-of-way grant or temporary use permit for which fees were assessed under paragraph (a) of this section, the holder thereof shall reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved.

(2) Each holder of a right-of-way grant or temporary use permit shall submit within 60 days of the issuance thereof a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way grant or temporary use permit for crossing public lands (e.g., for powerlines, pipelines, roads, and other linear uses).

Length	Payment
Less than 5 miles.....	\$20 per mile or fraction thereof.
5 to 20 miles.....	\$200.
20 miles and over.....	\$200 for each 20 miles or fraction thereof.

(ii) Each right-of-way grant or temporary use permit (e.g., for communication sites, reservoir sites,

plant sites, and camp sites)—\$100 for each 40 acres or fraction thereof.

(iii) If a project has the feature of subdivisions (i) and (ii) of this subparagraph in combination, the payment shall be the total of the amounts required by subdivisions (i) and (ii) of this subparagraph.

(3) When a right-of-way grant or temporary use permit is issued, the authorized officer shall estimate the costs, based on the best available cost information, expected to be incurred by the United States in monitoring holder activity. If such costs exceed the payment required by paragraph (b)(2) of this section by an amount which is greater than the costs of maintaining actual costs records for the monitoring process, the authorized officer shall require the holder to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(4) Following termination of a right-of-way grant or temporary use permit, the former holder shall be required to pay additional amounts to the extent the actual costs incurred by the United States have exceeded the payments required by paragraphs (b) (2) and (3) of this section.

§ 2803.1-2 Rental fees.

(a) The holder of a right-of-way grant or temporary use permit, except as provided in paragraphs (b) and (c) of this section, or when waived by the Secretary, shall pay annually, in advance, the fair market rental value as determined by the authorized officer. Said fee shall be based upon the fair market value of the rights authorized in the right-of-way grant or temporary use permit, as determined by appraisal by the authorized officer, provided however, that where the annual fee is \$100 or less, an advanced lump-sum payment for 5 years for right-of-way grants and 3 years for temporary use permits may be required. The lump-sum for use and occupancy of lands under these regulations shall not be less than \$25.00.

(b) To expedite the processing of any grant or permit pursuant to this part, the authorized officer may establish an estimated rental fee and collect this fee in advance with the provision that upon receipt of an approved fair market value appraisal the advance rental fee shall be adjusted accordingly.

(c) No fee, or a fee less than fair market rental, may be authorized under the following circumstances:

(1) When the holder is a Federal, State or local government or any agency or instrumentality thereof, excluding municipal utilities and cooperatives whose principal source of revenue is customer charges.

(2) When the holder is a nonprofit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise.

(3) When a holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary.

(4) Rental fees may be waived for rights-of-way involving cost share roads and reciprocal right-of-way agreements.

(5) In instances where the applicant holds an outstanding permit, lease, license or contract for which the United States is already receiving compensation, except under an oil and gas lease where the lessee is required to secure a right-of-way grant or temporary use permit under § 2880 of this title, no rental fee shall be charged for the following:

(i) Where the applicant needs a right-of-way grant or temporary use permit within the exterior boundaries of the permit, lease, license or contract area; and

(ii) Where the applicant needs a right-of-way across public lands outside the permit, lease, license or contract area in order to reach said area.

(d) Rental fees may be initiated or adjusted whenever necessary to reflect current fair market value: (1) As a result of reappraisal of fair market values which shall occur at least once every 5 years, or (2) as a result of a change in the holder's qualifications under paragraph (c) of this section. Reasonable notice shall be given prior to imposing or adjusting rental fees pursuant to this paragraph. Decisions on fees are subject to appeal pursuant to § 2804 of this title.

(e) If a charge required by this section is not paid when due, and such default shall continue for 30 days after notice, action may be taken to terminate the right-of-way grant. After default has occurred, no structures, buildings or other equipment may be removed from the servient lands except upon written permission from the authorized officer.

§ 2803.1-3 Bonding.

The authorized officer may require the holder of a right-of-way grant or temporary use permit to furnish a bond or other security satisfactory to him, to secure the obligations imposed by the grant or permit and applicable laws and regulations.

§ 2803.1-4 Liability.

(a) Except as provided in paragraph (f) of this section, each holder shall be fully liable to the United States for any damage or injury incurred by the United States in connection with the use and occupancy of the right-of-way or permit area by the holder.

(b) Except as provided in paragraph (f) of this section, holders shall be held to a standard of strict liability for any activity or facility within a right-of-way or permit area which the authorized officer determines, in his discretion, presents a foreseeable hazard or risk of damage or injury to the United States. The activities and facilities to which such standards shall apply shall be specified in the right-of-way grant or temporary use permit. Strict liability shall not be imposed for damage or injury resulting primarily from an act of war, an Act of God or the negligence of the United States. To the extent consistent with other laws, strict liability shall extend to costs incurred by the United States for control and abatement of conditions, such as fire or oil spills, which threaten lives, property or the environment, regardless of whether the threat occurs on areas that are under Federal jurisdiction. Stipulations in right-of-way grants and temporary use permits imposing strict liability shall specify a maximum limitation on damages which, in the judgment of the authorized officer, is commensurate with the foreseeable risks or hazards presented. The maximum limitation shall not exceed \$1,000,000 for any one event, and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred.

(c) In any case where strict liability is imposed and the damage or injury was caused by a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction in which the damage or injury occurred.

(d) Except as provided in paragraph (f) of this section, holders shall be fully liable for injuries or damages to third parties resulting from activities or facilities on lands under Federal jurisdiction in which the damage or injury occurred.

(e) Except as provided in paragraph (f) of this section, holders shall fully indemnify or hold harmless the United States for liability, damage or claims arising in connection with the holder's use and occupancy of rights-of-way or permit areas.

(f) If a holder is a State or local government, or agency or instrumentality thereof, it shall be liable

to the fullest extent its laws allow at the time it is granted a right-of-way grant or temporary use permit. To the extent such a holder does not have the power to assume liability, it shall be required to repair damages or make restitution to the fullest extent of its powers at the time of any damage or injury.

(g) All owners of any interest in, and all affiliates or subsidiaries of any holder of a right-of-way grant or temporary use permit, except for corporate stockholders, shall be jointly and severally liable to the United States in the event that a claim cannot be satisfied by the holder.

(h) Except as otherwise expressly provided in this section, the provision in this section for a remedy is not intended to limit or exclude any other remedy.

(i) If the right-of-way grant or temporary use permit is issued to more than one holder, each shall be jointly and severally liable under this section.

§ 2803.2 Holder activity.

(a) If a notice to proceed requirement has been included in the grant or permit, the holder shall not initiate construction, occupancy or use until the authorized officer issues a notice to proceed.

(b) Any substantial deviation in location or authorized use by the holder during construction, operation or maintenance shall be made only with prior approval of the authorized officer under § 2803.6-1 of this title for the purposes of this paragraph, substantial deviation means:

(1) With respect to location, the holder has constructed the authorized facility outside the prescribed boundaries of the right-of-way authorized by the instant grant or permit.

(2) With respect to use, the holder has changed or modified the authorized use by adding equipment, overhead or underground lines, pipelines, structures or other facilities not authorized in the instant grant or permit.

(c) The holder shall notify the authorized officer of any change in status subsequent to the application or issuance of the right-of-way grant or temporary use permit. Such changes include, but are not limited to, legal mailing address, financial condition, business or corporate status. When requested by the authorized officer, the holder shall update and/or attest to the accuracy of any information previously submitted.

(d) If required by the terms of the right-of-way grant or temporary use permit, the holder shall, subsequent to construction and prior to commencing operations, submit to the authorized officer a certification of construction, verifying that the facility has been

constructed and tested in accordance with terms of the right-of-way grant or temporary use permit, and in compliance with any required plans and specifications, and applicable Federal and State laws and regulations.

§ 2803.3 Immediate temporary suspension of activities.

(a) If the authorized officer determines that an immediate temporary suspension of activities within a right-of-way or permit area for violation of the terms and conditions of the right-of-way authorization is necessary to protect public health or safety or the environment, he/she may promptly abate such activities prior to an administrative proceeding.

(b) The authorized officer may give an immediate temporary suspension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee or contractor of the holder, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm an oral order by a written notice to the holder addressed to the holder or the holder's designated agent.

(c) An order of immediate temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(d) Any time after an order of immediate temporary suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(e) The authorized officer may render an order to either grant or deny the request to resume within 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, and the holder shall have the same right to appeal the denial as if a final order denying the request had been issued by the authorized officer.

§ 2803.4 Suspension and termination of right-of-way authorizations.

(a) If the right-of-way grant or temporary use permit provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon condition, event, or time, the right-of-way authorization shall thereupon automatically terminate by operation of law, unless some other procedure is specified in the right-of-way grant or temporary use permit. The authorized

officer may terminate a right-of-way grant or temporary use permit when the holder requests or consents to its termination in writing.

(b) The authorized officer may suspend or terminate a right-of-way grant or temporary use permit if he determines that the holder is unwilling, unable or has failed to comply with applicable laws or regulations, or any terms, conditions or stipulations of the right-of-way grant or temporary use permit or has abandoned the right-of-way.

(c) Failure of the holder of a right-of-way grant to use the right-of-way for the purpose for which the authorization was issued for any continuous five-year period shall constitute a presumption of abandonment. The holder may rebut the presumption by proving that his failure to use the right-of-way was due to circumstances not within the holder's control.

(d) Before suspending or terminating a right-of-way grant pursuant to paragraph (b) of this section, the authorized officer shall give the holder written notice that such action is contemplated and the grounds therefor and shall allow the holder a reasonable opportunity to cure such noncompliance.

(e) In the case of a right-of-way grant that is under its terms an easement, the authorized officer shall give written notice to the holder of the suspension or termination and shall refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR Part 4. If the Administrative Law Judge determines that grounds for suspension or termination exist and such action is justified, the authorized officer shall suspend or terminate the right-of-way grant.

§ 2803.4-1 Disposition of improvements upon terminations.

Within a reasonable time after termination, revocation or cancellation of a right-of-way grant, the holder shall, unless directed otherwise in writing by the authorized officer, remove such structures and improvements and shall restore the site to a condition satisfactory to the authorized officer. If the holder fails to remove all such structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but the holder shall remain liable for the cost of removal of the structures and improvements and for restoration of the site.

§ 2803.5 Change in Federal jurisdiction or disposal of lands.

(a) Where a right-of-way grant or temporary use permit administered under these regulations traverses public lands that are transferred to another Federal agency, administration of the right-of-way shall, at the discretion of the authorized officer, be assigned to the acquiring agency unless such assignment would diminish the rights of the holder.

(b) Where a right-of-way grant or temporary use permit traverses public lands that are transferred out of Federal ownership, the transfer of the land shall, at the discretion of the authorized officer, include an assignment of the right-of-way, be made subject to the right-of-way, or the United States may reserve unto itself the land encumbered by the right-of-way.

§ 2803.6 Amendments, assignments and renewals.**§ 2803.6-1 Amendments.**

(a) Any substantial deviation in location or use as set forth in § 2803.2(b) of this title shall require the holder of a grant or permit to file an amended application. The requirements for the amended application and the filing are the same and shall be accomplished in the manner as set forth in subpart 2802 of this title.

(b) Holders of right-of-way grants issued before October 21, 1976, who find it necessary or are directed by the authorized officer to amend their grants shall comply with paragraph (a) of this section in filing their applications. Upon acceptance of the amended application by the authorized officer an amended right-of-way grant shall be issued. To the fullest extent possible, and when in the public interest as determined from current land use plans and other management decisions, the amended grant shall contain the same terms and conditions set forth in the original grant with respect to annual rent, duration and nature of interest.

§ 2803.6-2 Amendments to existing railroad grants.

(a) An amended application required under § 2803.6-1(a) or (b), as appropriate, shall be filed with the authorized officer for any realignment of a railroad and appurtenant communication facilities which are required to be relocated due to the realignment. Upon acceptance of the amended application by the authorized officer, an amended right-of-way grant shall be issued within 6 months of date of acceptance of the application. The date of acceptance of the application for the purpose of this paragraph shall be

determined in accordance with § 2802.4(a) of this title.

(b) Notwithstanding the regulations of this part, the authorized officer may include in the amended grant the same terms and conditions of the original grant with respect to the payment of annual rental, duration, and nature of interest if he/she finds them to be in the public interest and the lands involved are not within an incorporated community and are of approximately equal value.

§ 2803.6-3 Assignments.

Any proposed assignment in whole or in part of any right or interest in a right-of-way grant or temporary use permit acquired pursuant to the regulations of this part shall be filed in accordance with §§ 2802.1-1 and 2802.3 of this title. The application for assignment shall be accompanied by the same showing of qualifications of the assignee as if the assignee were filing an application for a right-of-way grant or temporary use permit under the regulations of this part. In addition, the assignment shall be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the grant to be assigned plus any additional terms and conditions and any special stipulations that the authorized officer may impose. No assignment shall be recognized unless and until it is approved in writing by the authorized officer.

§ 2803.6-4 Reimbursement of cost for assignments.

All filings for assignments made pursuant to this section shall be accompanied by a nonrefundable payment of \$50.00 from the assignor. Exceptions for a nonrefundable payment for an assignment are same as in § 2802.1 of this title.

§ 2803.6-5 Renewals of right-of-way grants and temporary use permits.

(a) When a grant provides that it may be renewed, the authorized officer shall renew the grant so long as the project or facility is still being used for purposes authorized in the original grant and is being operated and maintained in accordance with all the provisions of the grant and pursuant to the regulations of this title. Prior to renewing the grant, the authorized officer may modify the grant's terms, conditions, and special stipulations to reflect any new requirements imposed by current Federal and State land use plans, laws, regulations or other management decisions.

(b) When a grant does not contain a provision for renewal, the authorized

officer, upon request from the holder and prior to the expiration of the grant, may renew the grant at his discretion. A renewal pursuant to this section shall comply with the same provisions contained in paragraph (a) of this section.

(c) Temporary use permits issued pursuant to the regulations of this part may be renewed at the discretion of the authorized officer. The holder of a permit desiring a renewal shall notify the authorized officer in writing of the need for renewal prior to its expiration date. Upon receipt of the notice, the authorized officer shall either renew the permit or reject the request.

(d) Renewals of grants and permits pursuant to paragraphs (a), (b) and (c) of this section are not subject to § 2803.1-1 of this title.

(e) Denial of any request for renewal by the authorized officer under paragraphs (b) and (c) of this section shall be final with no right of review or appeal.

Subpart 2804—Appeals.**§ 2804.1 Appeals procedure.**

(a) All appeals under this part shall be taken under 43 CFR Part 4 from any final decision of the authorized officer to the Office of the Secretary, Board of Land Appeals.

(b) All decisions of the authorized officer under this part shall remain effective pending appeal unless the Secretary rules otherwise, and the provisions of 43 CFR 4.21(a) shall not apply to such decisions.

Subpart 2805—Applications for Electric Power Transmission Lines of 66 KV or Above**§ 2805.1 Application requirements.**

(a) Each application for authority to construct, work and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 66 kilovolts or higher under this subpart shall be referred to the Secretary of the Department of Energy to determine the relationship of the proposed facility to the power-marketing program of the United States. Where the proposed facility does not conflict with the program of the United States, the authorized officer, upon notification to that effect, shall proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction or utilization of the facility in order to eliminate conflicts with the power-marketing program of the United States, the authorized officer shall obtain from the applicant written

consent to or compliance with such requirements before taking further action on the application: *Provided, however,* That if increased costs to the applicant result from changes to eliminate conflicts with the power-marketing program of the United States, and it is determined that a right-of-way should be granted, such changes will be required upon equitable contract arrangements with the Secretary of the Department of Energy covering costs and other appropriate factors.

(b) The applicant shall make provision, or bear the reasonable cost, as may be determined by the Secretary of the Department of Energy, of making provision for avoiding inductive or conductive interference between any transmission facility or other works constructed, operated or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line or other communication facilities existing when the right-of-way is authorized or any such installation, line or facility thereafter constructed or operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating conductive interference.

(c) An applicant for a right-of-way for a transmission facility having a voltage of 66 kilovolts or more shall execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(1) In the event the United States, pursuant to law, acquires the applicant's transmission or other facilities constructed on or across such right-of-way, the price to be paid by the United States shall not include or be affected by any value of the right-of-way granted to the applicant under authority of the regulations of this part.

(2) The Department of Energy shall be allowed to utilize for the transmission of electric power and energy any surplus capacity of the transmission facility in excess of the capacity needed by the holder in connection with the holder's operations, or to increase the capacity of the transmission facility at the Department's expense and utilize such increased capacity for the transmission of electric power and energy. The utilization of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department of Energy desires to utilize surplus capacity thought to exist in the transmission facility, notification shall be given to the holder, and the holder shall furnish to the Department of Energy within 30 days

a certificate stating whether the transmission facility has any surplus capacity not needed by the holder for the transmission of electric power and energy in connection with the holder's operations and, if so, the amount of such surplus capacity.

(ii) Where the certificate indicates that there is no surplus capacity or that the surplus capacity is less than that required by the Department of Energy, the authorized officer may call upon the holder to furnish additional information upon which its certification is based. Upon receipt of such additional information, the authorized officer shall determine whether surplus capacity is available, and if so, the amount of such surplus capacity.

(iii) In order to utilize any surplus capacity determined to be available, or any increased capacity provided by the Department of Energy at its own expense, the Department of Energy may interconnect its transmission facilities with the holder's transmission facility in a manner conforming to approved standards of practice for the interconnection of transmission circuits.

(iv) The expense of interconnection will be borne by the Department of Energy which shall at all times provide and maintain adequate protective equipment to insure the normal and efficient operation of the holder's transmission facilities.

(v) After any interconnection is completed, the holder shall operate and maintain its transmission facilities in good condition, and except in emergencies, shall maintain in a closed position all connections under the holder's control necessary for the transmission of the Department of Energy's power and energy over the holder's transmission facilities. The parties may, by mutual consent, open any switch where necessary or desirable for maintenance, repair or construction.

(vi) The transmission of electric power and energy by the Department of Energy over the holder's transmission facilities shall be effected in such manner as shall not interfere unreasonably with the holder's use of the transmission facilities in accordance with the holder's normal operating standards, except that the Department of Energy shall have the exclusive right to utilize any increased capacity of the transmission facility which has been provided at the Department of Energy's expense.

(vii) The holder shall not be obligated to allow the transmission of electric power and energy by the Department of Energy to any person receiving service from the holder on the date of the filing of the application for grant, other than

statutory preference customers including agencies of the Federal Government.

(viii) The Department of Energy shall pay to the holder an equitable share of the total monthly cost of that part of the holder's transmission facilities utilized by the Department for the transmission of electric power and energy. The payment shall be based on an amount in dollars representing the same proportion of the total monthly cost of such part of the transmission facilities as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the holder's transmission facilities bears to the total capacity in kilowatts of that portion of the transmission facilities. The total monthly cost shall be determined in accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission, exclusive of any investment by the Department of Energy in the part of the transmission facilities utilized by the Department.

(ix) If, at any time subsequent to a certification by the holder or determination by the authorized officer that surplus capacity is available for utilization by the Department of Energy, the holder needs the whole or any part of this capacity theretofore certified or determined as being surplus to the needs of the holder, the holder may request the authorized officer to modify or revoke the previous certification or determination by making application to the authorized officer not later than 36 months in advance of the holder's needs. Any modification or revocation of the certification of determination shall not affect the right of the Department of Energy to utilize facilities provided at its expense or available under a contract entered into by reason of the equitable contract arrangements provided for in this paragraph.

(x) If the Department of Energy and the holder disagree as to the existence or amount of surplus capacity in carrying out the terms and conditions of this paragraph, the disagreement shall be decided by a board of three persons composed as follows: The holder and the Department of Energy shall each appoint a member of the board and the two members shall appoint a third member. If the members appointed by the holder and the Department of Energy are unable to agree on the designation of the third member, he shall be designated by the Chief Judge of the United States Court of Appeals of the circuit in which the major share of the facilities involved is located. The board shall determine the issue and its determination, by majority vote, shall be binding on the Department of Energy and the holder.

(xi) As used in this section, the term "transmission facility" includes (a) all types of facilities for the transmission of electric power and energy and facilities for the interconnection of such facilities, and (b) the entire transmission line and associated facilities from substation or interconnection point to substation or interconnection point, of which the segment crossing the lands of the United States forms a part.

(xii) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the holder and the Department of Energy which agreement shall be concurred in by the Secretary of the Interior.

Subpart 2806—Designation of Right-of-Way Corridors

§ 2806.1 Corridor designation.

(a) The authorized officer may, based upon his/her motion or receipt of an application, designate right-of-way corridors across any public lands in order to minimize adverse environmental impacts and the proliferation of separate rights-of-way. The designation of corridors shall not preclude the granting of separate rights-of-way over, upon, under or through the public lands where the authorized officer determines that confinement to a corridor is not appropriate.

(b) Any existing transportation or utility right-of-way that is capable of accommodating an additional compatible right-of-way may be designated as a right-of-way corridor by the authorized officer without further review. Subsequent right-of-way grants shall, to the extent practical and as determined by the authorized officer, be confined to designated corridors, however, the designation of a right-of-way corridor is not a commitment by the authorized officer to issue right-of-way grants within the corridor. All applications for right-of-way grants, including those within designated corridors, are subject to the procedure for approval set forth in § 2802 of this title.

(c) Upon a determination by the authorized officer and based upon the criteria of § 2806.2 of this title, a right-of-way corridor shall be designated by publication of a notice in the Federal Register.

§ 2806.2 Designation criteria.

The locations and boundary designations of right-of-way corridors shall be determined by the authorized officer after a thorough review of:

(a) Federal, State and local land-use plans and applicable Federal and State laws.

(b) Environmental impacts on natural resources including soil, air, water, fish, wildlife, vegetation and on cultural resources.

(c) Physical effects and constraints on corridor placement or rights-of-way placed therein due to geology, hydrology, meteorology, soil or land forms.

(d) Economic efficiency of placing a right-of-way within a corridor, taking into consideration costs of construction, operation and maintenance, and costs of modifying or relocating existing facilities in a proposed corridor.

(e) National security risks.

(f) Potential health and safety hazards to the public lands users and the general public due to materials or activities within the right-of-way corridor.

(g) Engineering and technological compatibility of proposed and existing facilities.

(h) Social and economic impacts of the facilities on public lands users, adjacent landowners and other groups or individuals.

§ 2806.2-1 Procedures for designation.

(a) The authorized officer shall, to the extent practical, designate right-of-way corridors that are consistent with the Bureau of Land Management's land use plans. In making designations, the authorized officer shall consult with Federal, State, and local agencies, local landowners, and other interested user groups in a manner that provides an opportunity for interested parties to express their views and have those views considered prior to corridor designation.

(b) The authorized officer shall take appropriate measures to inform the public of designated utility transportation corridors, so that existing and potential right-of-way applicants, governmental agencies and the general public will be aware of such corridor locations and any restrictions applicable thereto. Public notice of such designations may be given through publication in local newspapers or through distribution of planning documents, environmental impact statements or other appropriate documents.

Subpart 2807—Reservation to Federal Agencies

§ 2807.1 Application filing.

A Federal agency desiring a right-of-way or temporary use permit over, upon, under or through the public lands pursuant to this part, shall apply to the

authorized officer and comply with the provisions of subpart 2802 of this title to the extent that the requirements of subpart 2802 of this title are appropriate for Federal agencies.

§ 2807.1-1 Document preparation.

(a) The right-of-way reservation need not conform to the agency's proposal, but may contain such modifications, terms, conditions or stipulations, including changes in route or site location, as the authorized officer determines appropriate.

(b) All provisions of the regulations contained in this part shall, to the extent possible, apply and be incorporated into the reservation to the Federal agency.

§ 2807.1-2 Reservation termination and suspension.

The authorized officer may suspend or terminate the reservation only in accordance with the terms and conditions of the reservation, or with the consent of the head of the department or agency holding the reservation.

2. The following are deleted: (a) Subpart 2811 of part 2810; (b) Subpart 2822 or part 2820; (c) Part 2840; (d) Part 2850; (e) Part 2860; (f) Part 2870; (g) Part 2890; (h) All appendices to group 2800.

[FR Doc. 80-13682 Filed 6-30-80; 8:45 am]

BILLING CODE 4310-84-M